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DECISION ON PETITION TO  
WITHDRAW HOLDING OF  
ABANDONMENT

FISH & RICHARDSON PC  
225 FRANKLIN ST  
BOSTON MA 02110

In re Application of  
Herbert Heiss, et al.  
Application No. 09/623,775  
Filed: September 8, 2000  
For: **METHOD FOR REMOVING ATM CELLS  
FROM AN ATM COMMUNICATIONS DEVICE**

This is a decision on the Petition to Withdraw Holding of Abandonment which is treated as pursuant to 37 CFR §1.181(a), filed February 9, 2005. No fee is required.

This application became abandoned to failure to timely and appropriately respond to the final Office action mailed June 30, 2004. A Notice of Abandonment has not yet been mailed.

Petitioner has alleged non-receipt of the final Office action. In the petition, the petitioner has provided a statement they reviewed the file record and that the final Office action was not received by the petitioner. Moreover, petitioner has provided a copy of a docket record where the non-received Office action would have been entered had it been received and docketed.

Based on M.P.E.P. § 711.03(c) [*See also Notice entitled Withdrawing the Holding of Abandonment When Office Actions Are Not received, 1156 O.G. 53 (November 16, 1993)*], in absence of any irregularity in the mailing of an Office Action, there is a strong presumption that the Office action was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. The showing required to establish the failure to receive an Office communication must include:

(a) a statement from the practitioner stating that the Office communication was not received by the practitioner;

(b) a statement attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received; and,

(c) a copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office communication may have been lost after receipt rather than a conclusion that the Office communication was lost in the mail. [emphasis added]

Petitioner satisfies the requirements set forth above, if taken in light of 37 C.F.R. §1.34.

Office records reveal that a change of address was filed on December 26, 2002, changing the correspondence address for the subject application to the above listed address. However, no further power of attorney and/or revocation of power of attorney was subsequently filed.

37 C.F.R. § 1.34 Recognition for representation, states in part:...


(a) When a registered attorney or agent acting in a representative capacity, pursuant to § 1.31, appears in person or signs a paper in practice before the United States Patent and Trademark Office in a patent case, his or her personal appearance or signature shall constitute a representation to the United States Patent and Trademark Office that under the provisions of this subchapter and the law, he or she is authorized to represent the particular party in whose behalf he or she acts. In filing such a paper, the registered attorney or agent should specify his or her registration number with his or her signature. Further proof of authority to act in a representative capacity may be required. [emphasis added]

Petitioner provided their registration number and indicated that they are at the correspondence address of record and as indicated on the petition. Accordingly, petitioner's statement will be accepted. The petition goes on to provide a declaration from a Janine Goodwin, senior docketing specialist. However, said declaration does not provide any further evidence regarding power of attorney.

The showing offered complies with the requirements of a successful petition to withdraw the holding of abandonment due to non-receipt of the final Office action mailed June 30, 2004. Therefore, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

Accordingly, the petition is **GRANTED**.

Due to the time lapse from the previous Office action and this decision, the file will be forwarded to the examiner for updating the search and the Office action as appropriate. The time period for response will be set to run from the mailing date of the new action.

  
Dwayne Bost

Special Program Examiner  
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Communications